

To: Holly Coon, Chair, Uniformity Committee

From: Tommy Hoyt, Chair, Marketplace Facilitator Work Group; Richard Cram

Re: Issues Addressed by Marketplace Facilitator Work Group

Date: November 7, 2018

The Marketplace Facilitator Work Group submits to the Uniformity Committee the attached White Paper, containing the work group recommendations for guidelines to states interested in enacting requirements for marketplace facilitators to collect sales/use tax on facilitated sales. Initially, the work group conducted a survey to determine which of sixteen issues should be addressed in developing that guidance. As a result of this survey (available for download on the MTC website at [www.mtc.gov](http://www.mtc.gov) under the “Uniformity” topic, then “Current & Recent Uniformity Projects,” then “Wayfair Implementation and Marketplace Facilitator Work Group”), the work group chose to address in the White Paper the following seven issues, listed in order of priority:

1. Definitions for “marketplace,” “marketplace seller,” and “marketplace facilitator;”
2. Registration requirements;
3. Who will be subject to audit;
4. How the economic nexus threshold should apply to multichannel retailers and how the economic nexus threshold should be measured;
5. Who is responsible for obtaining and maintaining exemption certificates;
6. Liability protection for marketplace facilitators against errors of marketplace sellers;
7. Risk of class action lawsuit protection for marketplace facilitators.

The following issues were considered in the survey but were determined to be outside the scope of the work group, so are not addressed in the White Paper:

Should the terms “referral” and “referrer” be defined?

Should states imposing a sales volume-based economic nexus threshold for sales/use tax collection also consider adopting an economic—or factor presence nexus threshold for income tax?

Should states strive to simplify the registration process and require the minimum information necessary from the marketplace seller or facilitator?

Should states clarify the extent that physical presence is still a relevant inquiry in determining substantial nexus?

How should states handle foreign sellers' sales through the marketplace facilitator?

Clarification is needed as to whether marketplace sellers in the Amazon FBA Program with inventory in a state are protected under P.L. 86-272 vs. having physical presence or economic nexus.

Should a carve-out provision be developed in the definition of "marketplace facilitator" to exclude local online delivery services (such as local area restaurant food delivery businesses)?

Should the definition of "retailer" and "retail sale" be revised to clarify whether a marketplace seller vs. a marketplace facilitator is considered to be the "retailer" making a "retail sale"?

Should states develop payment plan options for marketplace sellers with physical presence nexus that have past sales/use tax liabilities to resolve?

Should states consider including marketplace facilitator provisions in the administrative statutes for other types of excise taxes that involve marketplace facilitators, such as lodging, utilities, transportation services, etc.?